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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

TAROUB H. RUSNAK,  
Plaintiff and Respondent,

v.

JANICE B. SALAMAN,  
Defendant and Appellant.

A124350 & A125011

(San Francisco County Super.  
Ct. No. CGC-07-461715)

Plaintiff Taroub H. Rusnak moves to dismiss these consolidated appeals on the ground that defendant Janice B. Salaman has defied court orders and evaded plaintiff's legitimate efforts to collect on the judgment she won below. We shall grant the motion.

**I. BACKGROUND**

Plaintiff brought this action against defendant, both as trustee and administrator of the trust estate of her late husband, Jay Franklin Salaman, and as an individual successor-in-interest to her late husband, seeking money due on two promissory notes executed by Mr. Salaman. A jury found in plaintiff's favor on September 8, 2008, and the trial court entered judgment in favor of plaintiff in the amount of \$1,720,135.58 on January 7, 2009. Defendant appealed both from the judgment (No. A124350) and from an order granting plaintiff's motion for attorney fees (No. A125011).<sup>1</sup> The appeals were consolidated. It appears that defendant did not post a bond on appeal.

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<sup>1</sup> Plaintiff contends on appeal that the judgment erroneously failed to exclude her separate property; that the trial court improperly treated part of one of the notes as a

Plaintiff sought to collect on the judgment. She served special interrogatories and requests for production of documents on defendant, seeking information regarding assets that could be used to enforce the judgment. Defendant did not serve substantive responses, and plaintiff moved to compel. On June 26, 2009, the trial court found that defendant's failure to respond and objections to the discovery were a "misuse of the discovery process," and ordered defendant to provide further responses and to produce documents. The court also ordered her to pay sanctions.

Defendant did not provide the responses and documents. In August 2009, the trial court issued two orders for defendant to show cause why she should not be held in contempt for failure to comply with the court's June 26, 2009, orders (1) to provide discovery responses and documents and (2) to pay sanctions, setting the hearings for September 3, 2009. Defendant failed to appear as ordered, and the trial court ordered the issuance of two body attachments and warrants of attachment for contempt, setting bail at \$50,000 for violating each of the two orders.

Meanwhile, plaintiff sought several times to have defendant appear for a debtor examination. On May 15, 2009, the court issued an order for defendant to appear on June 22, 2009, for an examination. On May 18, 2009, the trial court ordered defendant to provide her current address for service of process no later than May 22, 2009. Defendant failed to provide her address, and the trial court eventually found her in contempt and ordered her to pay sanctions and attorney fees. In doing so, the court found that a valid order was entered by the court, that defendant had knowledge of the order, that she had the ability to comply with the order, and that she had willfully disobeyed the order.<sup>2</sup>

On June 26, 2009, plaintiff obtained a second order for defendant to appear at a debtor examination, set for July 16, 2009. She also obtained an order allowing service of

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consignment, leading to an improper calculation of interest; and that the court abused its discretion in granting leave to amend the complaint.

<sup>2</sup> Defendant had filed a "Notice of Non-opposition to Motion for Order re Contempt," stating that she did not oppose the request for an order awarding sanctions arising out of the May 18, 2009, order that she provide an address for service of process.

the debtor examination order on defendant via her then-counsel of record by email or facsimile. Defendant challenged the manner of service of the debtor examination order, and the examination was stayed pending determination of the matter. The court denied defendant's application for a protective order or to quash service of the order to appear for the debtor examination, stating that its June 26 order authorizing service "by alternative means was proper, in light of facts showing Defendant is evading service."

Defendant was ordered for a third time to appear for a debtor examination. On the appointed date, August 11, 2009, she failed to appear. The following day, the trial court issued and stayed a body attachment and warrant for her arrest. To give defendant a further opportunity to comply with the order, the court continued the debtor examination to September 2, 2009, and ordered her to appear for it.

Defendant failed to appear for the continued debtor examination on September 2, 2009, and the court issued a warrant of attachment for her failure to appear, setting bail at \$500. The court also ordered her to appear on September 15, 2009, to show cause why she should not be held in contempt. She failed to appear as ordered, and the court ordered the issuance of a body attachment for defendant and a warrant of attachment for contempt, setting bail at \$10,000.

The exhibits submitted in connection with plaintiff's motion to dismiss this appeal also show that plaintiff served defendant with a "Notice to Consumer or Employee and Objection," on July 13, 2009, indicating that she intended to serve a subpoena on defendant's accountant seeking documents relating to her financial affairs and those of the J. Franklin Salaman Trust, including information about their tax returns, real property, income, and assets, and defendant's present address. Apparently before the subpoena could be served, defendant asked the accountant to send her all of the records he had for her and her late husband, and the accountant did so.

## **II. DISCUSSION**

Plaintiff contends, and we agree, that defendant's actions showed a pattern of defying court orders and evading discovery. "It is well settled that this court has the inherent power to dismiss an appeal by any party who has refused to comply with orders

of the trial court. [Citations.] . . . ‘A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]’ No judgment of contempt is required as a prerequisite to our exercising the power to dismiss. [Citations.] The power to dismiss an action for refusal to comply with a trial court order has been exercised in a variety of circumstances, including: where a parent had taken and kept children out of the state in violation of a divorce decree [citations]; where a husband had failed to pay alimony as ordered in an interlocutory judgment of divorce [citation]; where a party in a civil action was a fugitive from justice and in contempt of the superior court for failure to appear on criminal charges after being released on bail [citation]; and where defendants willfully failed to comply with trial court orders regarding a receivership. [Citation.] *Moreover, the inherent power to dismiss an appeal has been exercised in several cases where a party failed or refused to appear for a judgment debtor examination.* [Citations.]” (*TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377, 379-380, italics added; see also *Stone v. Bach* (1978) 80 Cal.App.3d 442, 443-444; accord, *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1675, 1682-1685.) Similarly, the court in *Say & Say v. Castellano* (1994) 22 Cal.App.4th 88, 94 (*Say & Say*), found it appropriate to dismiss an appeal where an appellant had been adjudged in contempt of court on three occasions, bench warrants had been issued for his arrest, and he had not purged the contempts.

The actions of defendant here show that she has persistently defied court orders, including orders to provide discovery, to provide her address for service of process, and to appear for debtor examinations. Multiple findings of contempt and warrants for her arrest have not persuaded her to abide by the trial court’s rulings. A party who acts in this way “ ‘is not entitled . . . to ask the aid and assistance of a court.’ ” (*Say & Say, supra*, 22 Cal.App.4th at p. 94, quoting *Moffat v. Moffat* (1980) 27 Cal.3d 645, 652.) In the circumstances, dismissal is proper.

In opposition to the request for dismissal, defendant argues that her good faith is shown by the fact that plaintiff has liens on two pieces of real property owned or

co-owned by defendant, that she has been trying for some time to sell the properties, that when they are finally sold the proceeds will be sufficient to satisfy the judgment, and that plaintiff is currently receiving rents from one of the properties pursuant to a court-ordered assignment. She also argues that the question of whether she has acted in good faith is intertwined with one of the issues she has raised on appeal—whether the judgment may be satisfied from her separate property. That is beside the point. The trial court has repeatedly ruled that plaintiff is entitled to the discovery she seeks, and defendant has repeatedly defied the court’s orders. In the circumstances, she is not entitled to this court’s aid.<sup>3</sup>

### **III. DISPOSITION**

The appeals are dismissed.

RIVERA, J.

We concur:

REARDON, Acting P.J.  
SEPULVEDA, J.

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<sup>3</sup> In defendant’s opposition to plaintiff’s motion to dismiss and at oral argument, defendant’s counsel also contended that plaintiff’s efforts to collect the judgment from defendant’s separate property caused defendant to suffer a “breakdown,” and that it was “not fair” for plaintiff to use that breakdown “to undercut [defendant’s] right to an appeal.” We have searched the record and find no evidence whatsoever to support the claim that defendant suffered a “breakdown.”